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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,793	03/03/2004	Helena Corneliussen	1018798-000214	4388

21839 7590 09/10/2009
BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

NOTIFICATION DATE	DELIVERY MODE
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09/10/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No. 10/790,793	Applicant(s) CORNELIUSSON, HELENA	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-13 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2009 is/are: a) ☒ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6-15-09</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

Specification

Drawings

1. The drawings were received on 5-17-09. The drawings are approved. However see the following paragraph.

2. The drawings are objected to because the Figures are of faint/poor line quality. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

3. The disclosure is objected to because of the following informalities: 1) In paragraphs 20 and 21, the amended description of the points, i.e. “near the front edge”, should be --on the front edge-- to be consistent with the Figures. See Response to Arguments section *infra*. 2) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims, should be commensurate, see MPEP 608.01(d) Appropriate correction is required.

Claim Language Interpretation

4. Since no terminology has been explicitly defined, such will be given its usual, e.g. dictionary definition. It is further noted that the claims do not require the barrier be a separate component, i.e. can be monolithically formed with upper and lower cover sheets. It is also noted that the terminology “near” is considered relative absent claiming specific dimensions/distances. It is also noted that the elastic element of each barrier is still not required to be at or near the fold along its entire length just run between attachment points to the article and along the entire length of the fold. It is also noted that claims 1 and 15 do not require the attachment points extend under the barrier.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 1, 3-7, 11-13 and 15 under 35 U.S.C. 103(a) as being unpatentable over Suzuki '607 in view of Robertson '364 and Olsson '732, alone, or, in the alternative, Suzuki '607, Robertson '364, Sageser '428 in view of Olsson '732.

Claims 1-3 and 11-12: See Figures 2-5 and Figures 7-8 (the last two Figures show alternative embodiments at the same cross -section as that of Figure 4), and the English abstract of '607, i.e. '607 teaches an absorbent article defining a longitudinal direction, a front portion adjacent 4b in the longitudinal direction, a rear portion adjacent 6, and a middle portion along III-III arranged between said portions and having an upper, liquid-permeable cover sheet 1, a lower, liquid-impermeable cover sheet 2, an absorption body 3 arranged between the cover sheets, and first and second side barriers 4 along respective longitudinal sides, each side barrier in turn comprising at least one longitudinal elastic element 5, the first and second side barriers, viewed from above, defining a shape which narrows in the direction towards said front portion so that the distance, in the transverse direction of the article, between the elastic elements, is greater in said rear portion than in said front portion, see Figure 2, and each side barrier is arranged such that it is secured in contact with the front portion, see Figure 5, and it defines a folded structure of substantially the same shaped cross section as shown in Figure 4 of the instant application, see Figure 5 again, or a Z-shape, i.e. in combination with the upper cover sheet, see Figures 2-3 and 5 (Note the shape in the front portion also lies between lines III and IV) and Figures 7-8, with a fold adjacent 10 or 12 directed towards the inside of said article. The side barriers are secured to the cover sheet so that respective first and second longitudinal lines of attachments/folds are defined, see Figures 3-5 adjacent 9 or 10 and 11 and Figures 7-8 adjacent 12. The elastic element in the side barriers, viewed from above, are secured to the rear portion outside their

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respective folds, see Figure 4 between 10 and 11 and similar locations in Figures 7-8. The elastic elements run at least partially in contact with their respective folds, see element 5 in Figure 5, with respect to the fold adjacent 10 and see element 5 in Figure 4 adjacent the fold adjacent 11. Finally the first and second side barriers by themselves constitute a combined side leakage protection and leg elastic for the article.

Each side barrier may be monolithically formed or not monolithically formed from the upper and lower cover sheets, see Figures 3-5 and also see Figures 7 and 8, especially Figure 7, which show other portions of the barrier including the entire barrier being not monolithically formed with the cover sheets.

The at least one elastic element of each side barrier is also positioned at or “near” the fold directed towards the inside of the article, see discussion of claim 11 *supra*, i.e. the elastic elements run at least partially in contact with their respective folds, see element 5 in Figure 5, with respect to the fold adjacent 10, i.e. at and/or “near”, and the Claim Language Interpretation section *supra*, i.e. the distance defined by the terminology “near” is considered relative, i.e. see element 5 in Figures.

Claim 1 also requires the at least one longitudinal elastic element of each side barrier also run between an attachment point “on a front portion” of the article and an attachment point “on a rear portion” of the article and “along the entire length” of the fold directed towards the inside of the article. It is the Examiner’s first position, see Claim Language Interpretation section *supra*, that the ‘607 reference teaches such structure since the attachment points are on front and rear edge portions and the elastic runs between such points along the fold extending between such points. In any case, i.e. the Examiner’s second position, even if ‘607 does not teach the elastic

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member running between front and rear terminal edges, ‘607 at the very least teaches the elastic element of each side barrier running between front and rear attachment points to the article along the length of the fold therebetween. See also ‘364 at the paragraph bridging cols. 10-11 as well as the discussion thereof *infra*, and ‘428 at col. 10, lines 11-16 as well as the discussion thereof *infra*. To make the length of the elastic member of ‘607, e.g. at least the length of the crotch, the entire length of the fold, i.e. between attachment points, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by the ‘364 and ‘428. In so doing, the prior art combination necessarily and inevitably teaches the elastic members as now claimed as best understood, see again the Claim Language Interpretation section and paragraph 5 *supra*.

Claim 1 further requires a rear barrier formed in said rear portion and attached to the article along the rear edge of the article, forming a pocket with the first and second side barriers and extending to the rear edge and beyond the lines of attachment in the transverse direction which lines extend thereunder. While Suzuki ‘607 does not teach such a rear barrier, it does teach side barriers, i.e. suggests the desire for barriers/leakage prevention. However, see Robertson ‘364 at the Figures and col. 3, lines 9-33, the paragraph bridging cols. 4-5, note esp. “at least four points”, “along a line”, “along two lines(as is shown”, and col. 13, line 52-col. 14, line 22 and paragraph bridging cols. 14-15, e.g. longitudinal and/or lateral extents of rear barrier and such, e.g. “beyond”, with respect to side barriers, col. 12, line 23-col. 13, line 50, e.g. elastic film of laminate is an elastic element, and col. 17, line 45-col. 18, line 8 and Olsson et al ‘732 at the Figures, especially 1 and 9, col. 11, lines 45 et seq and the abstract which teach a rear barrier formed in the rear portion and attached to the article along the rear edge of the article, forming a

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pocket with the first and second side barriers and extending to the rear edge and beyond the lines of attachment in the transverse direction which lines extend thereunder as well as for taking up bodily excretions in the direction rearwards and includes an elastic element having attachment points which, viewed from above, at least extend outside rear attachment points of elastic elements in the side barriers such that a barrier is defined along both the longitudinal sides and rear side of the article. Therefore to employ a rear barrier such as, for example, taught by '364 and '732 on the '607 device would be obvious to one of ordinary in the art in view of the recognition that such a feature in combination with side barriers improves the ability of the article to prevent leakage and the desire suggested by '607. In so doing, the prior art combination teaches/suggests a rear barrier formed in the rear portion and attached to the article along the rear edge of the article, forming a pocket with the first and second side barriers as claimed and extending to the rear edge and beyond the lines of attachment in the transverse direction which lines extend thereunder as well as for taking up bodily excretions in the direction rearwards and includes an elastic element having attachment points which, viewed from above, at least extend outside rear attachment points of elastic elements in the side barriers such that a barrier is defined along both the longitudinal sides and rear side of the article. It is noted that the instant application discloses no criticality of pocket extending longitudinally beyond the lines of attachment.

Claims 4-6: These claims further require such rear barrier be intended for taking up bodily excretions in the direction rearwards along the article, include a further elastic element and such further elastic element and attachment points thereof, when viewed from above, at least extend outside attachment points on the rear portion of the article, se CLI, such that a

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barrier is defined along both the longitudinal sides and rear side of the article. While Suzuki '607 does not teach such a rear barrier, it does teach side barriers, i.e. suggests the desire for barriers/leakage prevention. However, see discussion of claim 1 supra.

Claims 7 and 13: These claims require each side barrier include two elastic elements one extending outside the other as viewed in relation to a longitudinal axis of symmetry through the article and the elastic elements consisting of elastic threads. While '607 does not show such, it does show a single elastic strip. Furthermore, for example, '364 at col. 11, lines 41-62 and '732 at col. 7, lines 42-45 teach the interchangeability of parallel elastic threads for a strip or film. Therefore to make the elastic strip of each side barrier of '607 two elastic threads instead would be obvious in view of the interchangeability as taught by '364 and '732. In so doing the prior art teaches the structure of claims 7 and 13.

Claim 15: See the discussion of claims 1 and 4-6 supra.

7. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki '607 in view of Robertson '364, Sageser '428 in view of Olsson '732

Claims 8-10 require the distance between the elastic elements of the side barriers is at least two times greater at the said rear portion than at the front portion or the distance between the elastic elements of the side barriers is at least three times greater at the rear portion than at the front portion or the distance between parts of the elastic elements the side barriers nearest to the inside of the article or is within the range of 1 - 3 cm at said front portion, respectively. Note paragraphs 33-34 of the instant application. While the claimed distance as seen in Figures 3 and 5 is approximately two times greater and there is a space at the front portion the '607 reference does not explicitly teach the claimed distances. Also note again Suzuki '607 does teach side

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barriers, i.e. suggests the desire for barriers/leakage prevention. However, see ‘428 at col. 7, lines 18-42 and col. 7, line 66-col. 8, line 50, i.e. spacing apart of the edges, i.e. elastics, of inwardly folded front portions of side barriers a distance of -2.5 cm to 15 cm combined with outwardly folded or flipped out rear portions of side barriers provides a better fit to the contours of the wearers body which reduces leakage (Note that if the front edges as shown in Figure 1 were spaced about next to each other, i.e. 0 cm, the spacing in the rear would clearly be at least 3 times that in the front, as shown the spacing in the rear is about 2-3 times the spacing in the front.). Therefore, to employ the spacing as taught by Sageser ‘428, i.e. as claimed, on the ‘607 device, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such would provide improved fit with the body resulting leakage prevention and the desire suggested by ‘607.

Response to Arguments

8. Applicant’s remarks have been carefully considered but are either deemed moot in that they have not been repeated or are deemed not persuasive for the reasons set forth supra, e.g. because such are narrower than the claim language and/or the teachings of the prior art and/or the prior art rejections, e.g. Applicant’s remarks in the paragraphs bridging pages 15-17 are narrower than the rejection, i.e. the Examiner did not reject the claims on ‘364 or ‘732 alone, but rather the combination of Suzuki ‘607 in view of Robertson ‘364 and Olsson ‘732, alone, or, in the alternative, Suzuki ‘607, Robertson ‘364, Sageser ‘428 in view of Olsson ‘732. Furthermore it is noted that the prior art rejection is not to bodily incorporate the features of the secondary references, i.e. the test for obviousness is not whether the features of a secondary reference may

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be bodily incorporated into the structure of the primary reference but rather what the teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is noted in any case that the arguments are narrower than the prior art teachings, e.g. '364 teaches the rear barrier can extend across the entire width and is attached at its width periphery, e.g. similar to 96 but adjacent 54, and at the corner points 110, i.e. when it extends across there is a pocket between the barrier 78 and barriers 62, e.g. adjacent/beneath lines 92 which extends across the entire width between a surface of the side barriers, e.g. the surface adjacent the arrow from 60 in Figure 2, and rear barrier, e.g. surface adjacent the arrow from 78 in Figure 3, but outside the lines of attachment 98. Regarding arguments with respect to paragraph 3., section 1) supra, see Figures and descriptions in paragraphs 20-21 as originally filed.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1, 6 and 15.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

September 2, 2009

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